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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 HEALTH VINCENT FULKERSON *ex rel.*  
10 ESTATE OF LARRY MICHAEL  
11 FULKERSON,

12 Plaintiff,

13 vs.

14 ALLSTATE INSURANCE, et al.,

15 Defendants.

Case No. 3:19-CV-00710-RCJ-WGC

**ORDER**

16 Defendants move to dismiss the complaint arguing, among other things, failure to state a  
17 claim under Fed. R. Civ. P. 12(b)(6). (ECF Nos. 9 and 14.) However, the Court does not reach the  
18 merits of these motions because there is an issue of subject-matter jurisdiction that must be  
19 addressed first, despite there being no objection by Defendants. *See Arbaugh v. Y&H Corp.*, 546  
20 U.S. 500, 514 (2006) (holding that if a court determines it lacks subject-matter jurisdiction, then  
21 its authority is limited to making that finding and dismissing the claims); *Louisville & Nashville*  
22 *R.R. Co. v. Motley*, 211 U.S. 149, 152 (1908) (noting that it is the duty of a federal court to ensure  
23 that its jurisdiction granted by statute is not exceeded).

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1 Plaintiff claims this Court has diversity jurisdiction under 28 U.S.C. § 1332, yet such  
2 jurisdiction exists only where no defendant is a citizen of the same state as a plaintiff and the sum  
3 in controversy is over \$75,000. According to the complaint, Plaintiff was a Nevada resident and  
4 the Defendants are an Illinois resident and two Nevada residents. (ECF No. 4 at 1–2.) Thus,  
5 complete diversity does not exist, divesting this Court of any jurisdiction over Plaintiff’s claims.  
6 Therefore, the Court dismisses this case without leave to amend for lack of jurisdiction. *See United*  
7 *States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) (“Leave to amend is warranted if  
8 the deficiencies can be cured with additional allegations that are ‘consistent with the challenged  
9 pleading’ and that do not contradict the allegations in the original complaint.” (quoting *Reddy v.*  
10 *Litton Indus., Inc.*, 912 F.2d 291, 296–97 (9th Cir.1990))).

### 11 CONCLUSION

12 IT IS HEREBY ORDERED that Plaintiff’s Amended Complaint (ECF No. 4) is  
13 DISMISSED WITHOUT PREJUDICE.

14 IT IS FURTHER ORDERED that Defendant’s Motion to Dismiss (ECF No. 9) is DENIED  
15 AS MOOT.

16 IT IS FURTHER ORDERED that Defendants’ Motion to Dismiss (ECF No. 14) is  
17 DENIED AS MOOT.

18 IT IS FURTHER ORDERED that the motion (ECF No. 25) is DENIED AS MOOT.

19 IT IS FURTHER ORDERED that the Clerk shall close this case.

20 IT IS SO ORDERED.

21 Dated July 8, 2020.

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23 ROBERT C. JONES  
24 United States District Judge